

# BLUE RIBBON TASK FORCE FOR MERIT SYSTEM FINAL REPORT JANUARY 2006



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#### BLUE RIBBON TASK FORCE FOR MERIT SYSTEM

#### TASK FORCE MEMBERS

- 1. Secretary Erwin Roberts, Chairman
- 2. Secretary LaJuana Wilcher
- 3. Senator Dan Kelly
- 4. Senator R. J. Palmer, II
- 5. Representative Michael Cherry
- 6. Representative Jeff Hoover
- 7. Ms. Laura Babbage
- 8. Mr. Fontaine Banks, Jr.
- 9. Mr. John Y. Brown, III
- 10. Ms. Vickie Yates Brown
- 11. Mr. Timothy R. Coleman
- 12. Mr. Don Dampier<sup>1</sup>
- 13. Ms. Sarah Hall
- 14. Mr. L. J. "Todd" Hollonbach, IV
- 15. Mr. William (Bill) Lear
- 16. Ms. Joy Moore
- 17. Ms. Barbara Jane "Janey" Moores
- 18. Ms. Karen A. Neeley
- 19. Mr. Jack C. Smith, Jr.
- 20. Mr. Juan G. Rodriguez

<sup>1</sup> Attorney General Gregory D. Stumbo was originally appointed as a member of the Task Force. He resigned by letter dated August 29, 2005. Subsequently, Mr. Don Dampier was appointed to fill the vacancy created by Attorney General Stumbo's resignation.

### BLUE RIBBON TASK FORCE FOR MERIT SYSTEM SUB-COMMITTEES

#### **GOVERNANCE**

Chair: Senator Dan Kelly

Ms. Laura Babbage

Mr. John Y. Brown

Mr. Tim Coleman

Ms. Vickie Yates Brown

#### Subject Matter:

- a. Personnel Board
- b. Political Influence/Activity
- c. Compliance with Federal Standards
- d. Appointment and Duties of Secretary of Personnel Cabinet

#### **SELECTION**

Chair: Representative Jeff Hoover

Ms. Sarah Hall

Ms. Barbara Moores

Mr. Fontaine Banks

Mr. Todd Hollenbach

#### Subject Matter:

- a. Examine 18A.032
- b. Testing
- c. Standardized selection process
- d. Selection method changes

#### **EMPLOYEE RELATIONS**

Chair: Representative Michael Cherry

Ms. Karen Neeley Mr. William Lear Ms. Joy Moore

Secretary Erwin Roberts

#### Subject Matter:

a. Disciplinary action

b. Grievances

c. Leave

d. Mediation

e. Affirmative Action

#### **CLASSIFICATION & COMPENSATION**

Chair: Senator R.J. Palmer

Don Dampier

Secretary LaJuana Wilcher Mr. Juan G. Rodriguez

Mr. Jack Smith

#### Subject Matter:

- a. Evaluation process
- b. Tying performance to pay
- c. ACE/ERA
- d. Performance Management Training
- e. Collecting job information
- f. Developing position descriptions
- g. Job evaluation Hay points

#### **INTRODUCTION**

On July 11, 2005, Governor Ernie Fletcher established the Blue Ribbon Task Force for the Merit System ("Task Force") to evaluate the current merit system laws, policies, and practices. Governor Fletcher charged the Task Force to:

- Review the merit law, as it stands, to understand its complexity and breadth
- 2. Examine how the merit system has been implemented in the past and the present
- 3. Review and address the 1993 Task Force report findings and recommendations
- 4. Make recommendations to him regarding any changes that are needed in the merit system law and implementation

In addition, Governor Fletcher encouraged the Task Force to develop a law and process that:

- Gives the appropriate protection to our state workers from capricious and arbitrary hiring practices
- 2. Ensures that a democratically elected governor can advance his or her vision that the people of Kentucky endorsed through the election process
- 3. Provides clear safe harbors and clearly defined procedures that ensure compliance meets the goals of protecting employees and protects those implementing the system from arbitrary civil and criminal actions
- 4. Is efficient, practical and reflective of modern practices to ensure that state government will be run efficiently and effectively

 Fosters the recruitment, retention and development of a competent and motivated work force

In 1993, Governor Brereton Jones established a Task Force to study the current merit system. The findings were striking. They determined that:

- Programs were not reflective of modern practices
- There existed confusion of and compensation inequities in multiple systems
- Statutes and regulations were also confusing and rigid
- The law was obsolete and ineffective with inconsistent interpretation and enforcement
- Rules and regulations were elaborate, confusing, outdated, inappropriate
  impeding the ability of government to recruit, develop, engage and retain a
  competent and motivated work force; and
- Agency specific personnel systems have resulted in a fragmented state personnel system that is cumbersome, inefficient and inequitable.

Twelve years passed, and nothing of substance was done with these poignant recommendations. The Task Force began its work by reviewing the 1993 Brereton Jones Study and the 1996 Hay Group Study. (Attached as Appendix A). The 1996 Hay Study evaluated the pay system, provided salary market comparisons, and reviewed all the merit system job classifications to determine if there were possibilities for consolidation or elimination of some of the job classifications.

#### TASK FORCE ACTIVITY

The full Task Force met eight times to hear testimony regarding the merit system and to recommend needed changes. In addition, the Task Force formed four subcommittees to focus specifically on the areas of selection; governance; employee relations; and classification and compensation. The Task Force subcommittees met several times to examine their respective areas and heard testimony from experts on various related topics. The Task Force subcommittees made preliminary recommendations for the entire Task Force to consider. After careful review of the preliminary recommendations, the Task Force adopted final recommendations on the merit system for consideration by the Governor, General Assembly, and Personnel Cabinet.

#### Orientation to the Merit System

The first organizational meeting of the Task Force was held at 2:30 p.m. on July 28, 2005 in Room 125, Capitol Annex, Frankfort, Kentucky. Governor Ernie Fletcher addressed the Task Force at the initial meeting charging its members with goals and guiding principles. The members received binders, which included KRS 18A, KAR 101, the employee handbook, and the 1993 Brereton Jones Study. The Task Force had a basic overview of the merit system hiring process, including basic definitions from the Personnel Cabinet. (Attached at Appendix B).

#### Overview of Human Resources

The second meeting of the Task Force was held at 9:00 a.m. on August 8, 2005 in Room 149, Capitol Annex, and Frankfort, Kentucky. During the meeting, the Task Force was presented with an overview of human resources, including systems and processes for

collecting information about jobs which form the basis for job descriptions, developing or using employment tests, and incorporating compliance. The presentation also demonstrated the need for internal and external demographic trends and the need to develop systems to insure that the organization is leveraging diversity as a competitive advantage.

Information regarding the benefit of agencies having systems for evaluating employee performance, providing employee feedback, rewarding employees for meeting or exceeding performance expectations, and for providing employees further training was also presented. The presentation also included information regarding best practices in human resources and the Hay system, which is a system that considers the knowledge, skills and abilities of a job in hiring practices.

#### Selection Methodology

The Task Force considered different types of selection processes, including behavioral-based interviewing, employment tests, and background investigations.

Currently, the Commonwealth pre-qualifies its applicants and there is no standardized process for determining who is selected from a register for interview.

The Task Force also received a presentation on selection methodology, which emphasized the need for selections to be efficient, accurate and fair. The selection process should be competency-driven with the candidate actually demonstrating, through a battery of tests, assessments, and psychologically-driven interviews, that the candidate actually meets the job requirements. The testing methods should directly correlate with the job duties of the position.

#### **Human Resource Best Practices**

The third meeting of the Task Force was held at 9:00 a.m. on August 29, 2005 in Room 129, Capitol Annex, and Frankfort, Kentucky. A presentation entitled "Kentucky – Creating Value for Human Resources" was presented to the Task Force (Attached at Appendix B). The following points were emphasized during the presentation:

- Most merit systems can either use an update or a complete overhaul
- Human Resource Systems can help increase efficiencies in state government
- The state should look at what is currently expended and measure what services are completed for that cost
- A well run Human Resource system is more cost effective than outsourcing
- Merit system rules across the country are archaic
- Human Resource and merit employees are asked to serve both internal customers (other agencies) and external customers (citizens)
- Human Resource personnel need to be out in the state to try to identify the various agencies' needs
- There is a need to identify emerging staffing needs due to attrition
- Use customer service focused questions during interviews
- Conduct customer service surveys
- Have dialogue between customers and employees
- Tie customer service surveys to employee rewards
- Utilize cabinet members to discuss best practices on how to engage others in the process
- Use human resources in a proactive way

- Validate testing to meet legal standards
- Utilize Performance Evaluation
- Measure person vs. person each person is ranked against the talent pool
- 360 degree feedback self-rank, supervisor ranking, peer group ranking, subordinates ranking
- Have an effective grievance process
- States can overcome resistance by finding the most resistant person and inviting that person to become part of the panel
- The time line for completing change is two-fold, the recommendation stage should be completed quickly and the implementation stage should be done in phases
- Utilize Peer Reviews
- Iowa and Texas are two of the states that have been through successful merit system reform; however, there is truly not one state that is a shining star in merit system reform
- Use Best Practices to be more interactive

#### **Employee Organizations**

The fourth meeting of the Task Force was held at 9:00 a.m. on September 7, 2005 in Room 129, Capitol Annex, and Frankfort, Kentucky. The focus of the meeting was to receive input from the Coalition for State Employee Organizations, which represents approximately 15,000 state employees. The outcome of the meeting is discussed in detail under the state employee input section of this report.

#### The Hay Group

The fifth meeting of the Task Force was held on September 14, 2005 in Room 149, Capitol Annex, and Frankfort, Kentucky. A presentation from the Hay Group was made to the Task Force regarding the following (Attached at Appendix B):

- Classification Consolidation
- Focus of restructuring merit systems in other states
- HR Professional should be an enabler of tools
- Pay for Performance
- Misalignment of classification and compensation funding
- Quality of work life to employees
- Compensation Philosophy
- Recruitment and selection
- Online Technology
- Outsourcing
- Other States implementing merit system changes
- Filling to vacancies rather than maintaining a list
- 1996 HAY Report
- Utilization of Policy Advisory Group
- Time Frame to consolidate class titles

#### Merit System Reform

In addition, a presentation on Merit System Reform was made regarding the following:

• Merit system reform in other states

- Needing to match demographic and workforce needs
- Decentralizing selection
- Workforce management issues
- Strategic workforce planning
- Recruiting per job
- On the spot job offer pending reference check
- Performance Evaluations
- Training for managers

#### STATE EMPLOYEE INPUT

The membership of the Task Force included two current long time merit employees and two retired merit employees, each with over thirty years of service. The Task Force sought input from state employees, which was an important part of the evaluation process. The Task Force received information and comments from state employees via email comments, through the Coalition of State Employee Organizations, and through meetings with employees.

#### Personnel Cabinet Website

The Personnel Cabinet website included a link to information on Task Force activities. The website link included streaming video of Task Force meetings provided by KET. The agendas and minutes for Task Force meetings were also available on the website link, as well as all presentations to the Task Force. Lastly, the Task Force provided a link for state employees and the public to send email comments on recommendations. A total of three hundred and thirteen email comments were received at the Personnel Cabinet website. The email comments addressed several aspects of the merit system.

#### Coalition of State Employee Organizations

Representatives from the Coalition of State Employee Organizations gave brief presentations to the Task Force before participating in a question and answer session.

During the question and answer session the following topics were discussed:

- Responsiveness of the Selection Process
- Difficulty in recruiting employees
- Benefits of Internal Mobility

- Technology updates for querying applications
- Methods to reward good work
- Pre-selection
- Recruitment of minorities and women
- 18A.140 and Affirmative Action
- Cumbersomeness of hiring process
- Non-merit employees transferring to merit positions right before administration changes
- Need for system for promotions
- Need for two separate registers
- Validity of State tests
- 1993 Jones Report
- Political interference on demotions and transfers
- Need for management training for proper completion of employee evaluations
- Ensuring a system which will enable the state to hire the most qualified person
- Creating a system to promote state government as a career
- Reinstatement of annual increment
- Performance Evaluation System
- Providing more training opportunities
- Uniformity of cabinets and agencies in selection criteria and process
- Personnel caps

• Inconsistency of interpretation of statues and regulations

Kentucky Association of State Employees

Early in the Task Force process, Secretary Roberts met with leadership of the

Kentucky Association of State Employees (KASE) and provided it with information,

including Task Force orientation materials. KASE declined to participate with Task

Force activities and additionally encouraged state employees to boycott the employee

input meetings.

Employee Input Meetings

Personnel Cabinet Secretary Erwin Roberts also met directly with state employees

throughout the Commonwealth to discuss the merit system. Secretary Roberts held

twelve meetings in ten cities to discuss the preliminary recommendations of the Task

Force and any other issues of interest to state employees. Approximately 1,550

employees attended the meetings asking questions and making comments on the

preliminary recommendations. The meeting schedule was as follows:

**Frankfort**: 10:00 a.m. and 2:00 p.m. - October 20th

Frankfort Convention Center Arena

Frankfort, Kentucky

Somerset: 10:00 a.m. - October 24th

Somerset Community College

Harold Rogers Student Committee Room

808 Monticello Street

Somerset, Kentucky

Henderson: 1:00 p.m. - October 24th

Henderson Community College, Fine Arts Center

Henderson, Kentucky

**Lexington**: 1:00 and 3:00 p.m. - October 25th

District 7 Transportation Building

763 West New Circle Road –Building 2

Lexington, Kentucky

**Bowling Green**: 10:00 a.m. - October 26th

Western Kentucky University Carol Knicely Center, Room 113 2355 Nashville Rd. Bowling Green, Kentucky

Highland Heights/Covington: 2:00 p.m. –October 27th

Kenton County City Building The Commissioner's Chambers 20 E. 7th Street Covington, Kentucky

**Prestonsburg**: 10:00 a.m. - October 28th Jenny Wiley State Park 75 Theatre Court Prestonsburg, Kentucky

<u>Hazard</u>: 1:00 p.m. - October 28th Hazard City Hall 700 Main Street Hazard, Kentucky

Kentucky Dam Village: 10:00 A.M. - October 31st

Kentucky Dam Village The Village Green Meeting Room US 641 South Paducah, Kentucky

Louisville: 3:00 p.m. - October 31st University of Louisville Shelby Campus Founder's Union Building 2nd Floor, Room 218 A&B 9001 Shelbyville Road Louisville, Kentucky

#### **Employee Recommendations**

During the meetings, state employees made several recommendations and

#### comments are listed below:

• Action should be taken to make application of all aspects of the merit system uniform

- Create a uniformed orientation program
- Grandfather current employees from maximum salaries
- Require locality pay
- Require shift pay
- Require higher pay for individuals with full four year degrees and master's degrees
- Give hazardous duty pay to mental health care workers
- Give hazardous duty pay for state mine inspectors
- Give hazardous duty pay and benefits for all employees in the Transportation Cabinet that are in the field
- Give hazardous duty pay for all bridge inspectors, engineers across the state not Bridge Crew Members- but for the inspectors who are on the highway, pedway, and work over water and climb or rappel
- Allow Overtime pay for hours worked over 8 hours in a given day. I.E. highway
  workers called in to clear roads work 12 hour shifts then forced to take a day off
  later in the week to eliminate OT for that week
- Convert leave balances to week for week then convert back to hours for purposes of implementation of 40 hour work week
- Create a 4 day work week
- Continue the Certified Public Manager Program
- Create specific legislation requiring Personnel Board final order which includes language advising the aggrieved party of their rights
- Experience gained outside of state government should be weighed equally with experience gained inside of state government
- Create a true incentive for "exceeding" evaluations by rewarding an entire week instead of just 2 days.
- Job Classifications where you have a II and a III with the III having greater duties and responsibilities should have different pay rates.

- Do not hire contractors in state offices and allow those contractors to serve in a supervisory capacity of the state employees.
- Agencies are currently using several different timesheets and regulations regarding leave usage are interpreted differently. Those regulations need to be clearly defined.
- Before any recommendations are sent to the legislature or passed, a merit employee board should be developed to review the proposed recommendations.
- Although registers are public, the new hires that result from the postings are not made public. Once the position has been filled and the employee is in place, an electronic site, for ALL agencies to post the names and positions filled should be established.

#### TASK FORCE PRELIMINARY RECOMMENDATIONS

The following preliminary recommendations were adopted by Task Force subcommittees for consideration by the entire Task Force:

#### **RECOMMENDATION 1:**

Maintain civil service protections against political influence in the selection of qualified state classified employees; redefine mission statement (KRS 18A.010(1)) to include strong and clear directive; clarify prohibitions against political discrimination within KRS 18A.140(1).

ACTION REQUIRED: Statutory change to amend to KRS 18A.010(1) to include the directives of KRS 18A.140(1).

**PROPOSED AMENDMENT - Representative Cherry**. Maintain civil service protections against political influence in the selection of qualified state classified employees *and for existing merit employees*; redefine mission statement (KRS 18A.010(1)) to include strong and clear directive; clarify prohibitions against political discrimination within KRS18A.140(1).

**RATIONALE:** The proposed amendment would include existing state employees in the protections against political influence.

**PROPOSED AMENDMENT** – **Selection Subcommittee**. Add the following sentence at the end of recommendation one. "The Merit Task Force recognizes the continuing deleterious effects of political patronage upon the effectiveness of the Merit System and makes the following

subrecommendations in order to institute further safeguards against illegal

merit job decisions based upon political patronage:"

**Sub-recommendation A**: Mandatory and reported training every year for

appointing authorities, appointing authority designees, and nonmerit

appointments (Director level and above) concerning the mission of KRS

Chapter 18A and prohibitions against political hiring.

Action required: Statutory and regulatory changes.

**Sub-recommendation B**: Along with Recommendation 1 regarding

mandatory and reported training, provision for a signed certification by

appointing authorities, appointing authority designees, or any person

involved in employment decisions of merit employees that political

consideration may not enter into personnel decisions for state classified

positions (includes potential for job termination in the event of violation of

the prohibition); See attached sample certification.

CERTIFICATION

With respect to all state classified jobs that are not exempt from the classified state service under KRS Chapter 18A, all state employees are strictly prohibited from directly or indirectly:

(1) Conditioning, basing, or knowingly prejudicing or affecting any term or aspect of state employment of an existing state classified employee, upon or because of any political reason or factor;

(2) Affecting the hiring of any individual as a state classified employee because of any political reason or factor.

Political considerations may not enter, in any manner whatsoever, into personnel decisions for state classified positions.

I certify that I am aware of and am in full compliance with the above stated prohibitions regarding personnel decisions by the Commonwealth of Kentucky. I certify, under penalty of perjury, as provided for by law, that, to the best of my knowledge, political considerations did not enter into the employment actions documented herein. I understand that failure to comply with the above prohibitions may result in disciplinary action up to and including immediate termination.

	_	
Signature	Printed Name	Date

ACTION REQUIRED: Statutory and regulatory changes

<u>Sub-recommendation</u> C: Provision that the Secretary of the Personnel Cabinet upon consultation with the appointing authority shall take steps to remove such person already appointed if the hiring decision was based solely or in large part upon pre-selection because of politics or patronage and not merit and fitness.

ACTION REQUIRED: Addition to KRS 18A.032 (1)

<u>Sub-recommendation</u> <u>D</u>: Mandatory controls within the Personnel Cabinet to communicate prohibitions against employment decisions based on politics or patronage to all state work force and Cabinets.

ACTION REQUIRED: See KRS 18A.030(2)(g), (h), and (i); the Personnel Cabinet has existing authority to make investigations concerning all matters touching the enforcement and effect of the

provisions of KRS Chapter 18A and its regulations, but the Personnel Cabinet needs to take a more active leadership role than in the past concerning this issue by preparing and implementing employee training and other safeguards in the selection and employment process. Statutory and regulatory changes to address political interference as a separate issue to communicate to all merit and unclassified system.

**Sub-recommendation E**: The Personnel Cabinet under its authority in KRS 18A.015(5) should take an active role in seeking and accepting grants or contribution, federal or otherwise, to assist in meeting the costs in carrying out the purpose of KRS Chapter 18A, which would include seeking grants for training for providing a system of safeguards protecting the state merit system against political patronage or interference.

ACTION REQUIRED: KRS 18A.015(5) and any other statutory and regulatory changes.

**Sub-recommendation F**: The Personnel Cabinet under its authority in KRS 18A.025, in particular (3)c, require its Division of Communications and Recognition to better communicate on an on-going basis with state employees about this important issue and establish internal controls, such as a reporting system (including anonymous complaints), to safeguard against politics or patronage involvement within the merit system.

ACTION REQUIRED: KRS 18A.025 and any other statutory and regulatory changes.

**Sub-recommendation G**: The Personnel Board under its existing authority in KRS 18A.075 should take a more active leadership role than in the past in promoting public understanding of merit principles in government service, making annual reports to the General Assembly (including a mandatory report about this important issue), and representing the public interest in the improvement of personnel administration in the state service (including fostering the interest of institutions of learning and of civic, professional, and employee organizations in the improvement of personnel standards in the state service);

ACTION REQUIRED: KRS 18A.075 and any other statutory and regulatory changes.

<u>Sub-recommendation</u> <u>H</u>: Examine KRS 18A.125 (control through payroll certification) for use as a safeguard;

ACTION REQUIRED: KRS 18A.125 and any other statutory and regulatory changes.

<u>Sub-recommendation I</u>: Examine KRS 18A.140 (prohibition against discrimination and political activity) for enhancement as to this issue);

ACTION REQUIRED: Statutory and regulatory changes

Sub-recommendation J: Need to identify required job criteria for

impartial and fair applicant screening;

ACTION REQUIRED: Statutory and regulatory changes

**<u>Sub-recommendation K</u>**: General Assembly oversight with ombudsman;

program review and investigation; yearly reporting by both Personnel

Board and Personnel Cabinet specifically on this issue and progress made

toward eliminating the ill effects of patronage on the merit system.

ACTION REQUIRED: Statutory and regulatory changes.

**Sub-recommendation L**: Establishment of a state panel for oversight as

to patronage issues and effect upon the state merit system.

ACTION REQUIRED: Statutory and regulatory changes.

**Sub-recommendation M**: The Office Merit System Referral which was

created by Executive Order #\_\_\_\_\_ be made a permanent office with

refined job responsibilities.

ACTION REQUIRED: Statutory and regulatory changes.

**RECOMMENDATION 2:** 

The Selection Sub-committee recommends adoption of the proposals contained

within the "Proposed Future Hiring Processes" from the Personnel Cabinet dated

September 2005, with the exception of the need for a clarification of the proposal under

"C – Register" concerning "eliminating registers for career path promotions and

promotions".

The Sub-committee recommends maintaining an employee promotion system that

provides career path opportunities through families of job classes based on merit,

experience, excellent performance and evaluation. This provides for the capability for

internal promotions without requiring external competition. This change will actually

enhance the ability of a classified employee to promote within the existing system. A

need exists for promulgation of a comprehensive Personnel Board regulation that defines

process, procedure, and implementation. (101 KAR 1:400 merely reiterates the statutory

requirements without any guidance for agency implementation). "Seniority" as defined in

KRS 18A.005(35) for an internal promotion shall not be a controlling factor.

ACTION REQUIRED: Statutory and Regulatory changes

**RECOMMENDATION 3:** 

To increase efforts for recruiting and hiring qualified veterans, minorities,

women, and disabled.

**ACTION REQUIRED: Statutory changes** 

**RECOMMENDATION 4:** 

Request Personnel Cabinet to study the feasibility of establishing a

comprehensive regulation for implementing procedures regarding background checks,

including but not limited to NCIC checks, and employment references for all executive

branch applicants.

ACTION REQUIRED: Personnel Cabinet study and possible statutory and regulatory

changes

**RECOMMENDATION 5:** 

Establish a process of ongoing review of the merit system and make

recommendations regarding the merit system including a comprehensive review and

update of KRS 18A and KAR 101. The review and update should be focused on

providing definitions for terms used throughout KRS 18A and KAR 101. The review and

update should also clarify any inconsistencies in the law including vague language

subject to differing interpretation. The update should make the law governing the merit

system user friendly and understandable and include a review of previous

recommendations that have not been implemented. After the initial review and update,

there should be an annual review and report.

**ACTION REQUIRED: Policy Change** 

**RECOMMENDATION 6:** 

It is recommended that "burrowing," the act of switching from a non-merit

position to a merit position late in an administration to get special merit protections, be

limited by statute for those without reversion rights under 18A.005 by increasing the

probation period to one year.

**ACTION REQUIRED: Statutory Change** 

# PROPOSED AMENDMENT–Representative Cherry. Amend KRS 18A.111 as follows:

- (1) Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 *and this section*, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.
- (2) An employee who satisfactorily completes the initial probationary period for the position to which he was initially appointed to the classified service shall be granted status and may not be demoted, disciplined, dismissed, or otherwise penalized, except as provided by the provisions of this chapter.
- (3) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.

- (4) An employee with status, who has been promoted, shall serve a promotional probationary period of six (6) months, except for those employees granted leave in excess of twenty (20) consecutive work days during this period. Such probationary periods shall be extended as prescribed in KRS 18A.005. During this period, he shall retain the rights and privileges granted by the provisions of this chapter to status employees.
- (5) An employee with status may request that he be reverted to a position in his former class at any time during the promotional probationary period.
- (6) A laid-off employee who accepts a bona fide written offer of appointment to a position shall not be required to serve an initial probationary period. He shall be an employee with status and shall have all rights and privileges granted employees with status under the provisions of this chapter.
- (7) A former unclassified employee under the provisions of paragraphs (d), (e), (f), (g), (h) and (i) of KRS 18A.115 shall serve an initial probationary period of twelve (12) months if the employee is appointed to a position in the classified service unless that employee had previously had status in the classified service or had been separated from his or her previous unclassified position for at least one hundred and eighty (180) days prior to the effective date of his or her appointment to the classified service.

**RATIONALE:** Concur with the intent of this recommendation, and believe that the proposed amendment would more specifically address that intent. Furthermore, the language in the proposed amendment cleared the House in 2004 on a nonpartisan 95-1 vote.

#### **RECOMMENDATION 7:**

KRS 18A.990, the penalty section of the civil service law, should be amended to apply to the traditionally criminal acts set out in KRS 18A.145. As currently written, the broad application of penalties to all acts within KRS 18A.005 through 18A.200 criminalizes such actions as the failure to maintain accurate records (i.e. KRS 18A.015); failure to document employee misconduct (i.e. KRS 18A.020); or the failure of the Secretary to attend all meetings. This overbroad reach of the statute trivializes the protections from criminal acts, by not distinguishing them from the day to day activities of the Commonwealth, including decisions concerning employment. Furthermore, it is recommended that acts of discrimination outlined in KRS 18A.140 be subject to civil penalties including fines and prohibition of future civil service when the board determines circumstances warrant referral to the Attorney General for enforcement of these civil penalties.

**ACTION REQUIRED: Statutory Change** 

PROPOSED AMENDMENT – Representative Cherry. Amend KRS 18A.990 as follows:

(1) Any person who willfully violates any provision of KRS 18A.005 to 18A.200 *other than KRS 18A.145*, *KRS 18A.140* (1), *or KRS 18A.140* (2)

[or of the rules] shall be guilty of a misdemeanor, and shall upon conviction be punished therefor with a sentence of from thirty (30) days to a maximum of six (6) months in jail.

- (2) Any person who is convicted of a misdemeanor *or a felony* under KRS 18A.005 to 18A.200 shall, for a period of five (5) years, be ineligible for appointment to or employment in a position by the Commonwealth, and if he is an officer or employee of the Commonwealth, shall forfeit his office or position.
- (3) Any *person* [officer or employee of the classified service] who willfully violates *KRS 18A.145*, *KRS 18A.140* (1), *or KRS 18A.140* (2) [any of the provisions of KRS 18A.140 shall forfeit his office or position, and for one (1) year shall be ineligible for any office or position in the Commonwealth's service. Violation of KRS 18A.140] shall constitute a *felony* [misdemeanor] subject to a sentence of from *one* (1) year to a maximum of five (5) years in the penitentiary [thirty (30) days to a maximum of six (6) months in jail].

RATIONALE: (Included with the concurrence of the amendment sponsor, Mr. Fontaine Banks). It is imperative that the Merit System Task Force does not weaken, or even be perceived as weakening, the merit system safeguards. Strengthening the penalties for violation of KRS 18A.140 (1) and (2), and KRS 18A.145 would increase the integrity of public employment, and demonstrate the commitment of the Task Force to the

many state employees who depend on these laws to protect them from political pressure and retaliation.

**PROPOSED MODIFICATION - John Brown, II**. Propose modifying this recommendation by deleting the final sentence beginning with "Furthermore" and ending with "penalties." I agree with decriminalizing purely administrative acts within KRS 18A.005 through 18A.200, but not with including KRS 18A.140 as part of the decriminalization.

#### **RECOMMENDATION 8:**

As presently enacted, KRS 18A.040 requires that "... rules, regulations and practices meeting merit system standards shall, where such standards apply as a prerequisite for federal grants-in-aid, be in effect continuously, notwithstanding any other provision of KRS 18A.005 to 18A.200. "The federal guidelines are set forth in 41 CFR 60 at pages 121-148. As stated, the purpose of the guidelines is to "incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin." The guidelines' focus is upon the procedures prospective employers utilize in making employment decisions regarding all aspects of the employment relationship. A procedure which has an adverse impact upon the employment relationship of any protected class is deemed discriminatory and in violation of the federal regulations. This statutory attempt to ensure compliance with federal

regulation creates potential conflicts with regard to selection and affirmative action.

Changes to selection procedures of employees must be in compliance with federal

guidelines set forth in 41 CFR 60. While it is not mandated, federal regulations allow for

the establishment of voluntary affirmative action programs. After reviewing KRS 18A, it

is apparent that if the Commonwealth utilizes a person's race, religion, sex or national

origin as a factor in selecting an employee, it would be in violation of state law as

currently written. Therefore, the current statutes should be amended to clearly permit an

affirmative action program.

ACTION REQUIRED: Statutory and Regulatory Change

**RECOMMENDATION 9:** 

Since both the Personnel Cabinet and the Personnel Board have the authority to

promulgate regulations with regard to personnel matters, topic areas that are under the

purview of each should be clarified and distinguished.

ACTION REQUIRED: Statutory and Regulatory Change

**RECOMMENDATION 10:** 

Adopt procedures to encourage resolution of personnel issues at the agency level

prior to going before the Personnel Board.

ACTION REQUIRED: Statutory and Regulatory Change

PROPOSED AMENDMENT -Representative Cherry. Combine with

Recommendation 14. Use as lead sentence in Recommendation 14, and

change the first word "make" to "making" in Recommendation 14.

**RATIONALE:** While concurring in the intent of this Recommendation, it

may be more clearly addressed by Recommendation 14.

**RECOMMENDATION 11:** 

The reporting requirements in KRS 18A.030 should be reviewed for relevance

and usefulness in providing meaningful oversight.

ACTION REQUIRED: Statutory Change

**RECOMMENDATION 12:** 

Final written decisions of the Personnel Board should be made available for

review electronically, organized by the statutory basis for appeal.

ACTION REQUIRED: Change in Personnel Board Practice

PROPOSED AMENDMENT -Representative Cherry. Combine with

Recommendation 15.

RATIONALE: Consolidating with Recommendation 15 will keep all

recommendations relating to the operations of the Personnel Board in one

recommendation.

**RECOMMENDATION 13:** 

The following technical changes to KRS 18A should be made:

• Change "commissioner" to "secretary" in 18A.037 and 18A.040. These

are apparent oversights from reorganization legislation.

• Update the citation in 18A.043 for the Federal Drug Free work place to

read "41 USCA § 707 et seq."

ACTION REQUIRED: Statutory Change

**RECOMMENDATIONS 14:** 

Make a progression of options available for merit employees to address work-

related complaints or disciplinary actions. At the beginning of the process, the employee

may choose between filing a grievance, or requesting mediation where the agency is

required to participate. If mediation is unsuccessful, or the grievance procedures fail to

address the employee's concerns to his satisfaction, the employee may have his concern

heard by a peer review committee (to be established according to Personnel Cabinet

guidelines). If the peer review committee action fails to address the employee's concerns

to his satisfaction, the employee may appeal the decision of the peer review committee to

the Personnel Board.

Require the Personnel Board to monitor all grievances and mediations filed. This

additional duty, along with information showing that the Personnel Board is underfunded

in its implementation of existing statutory duties, makes it necessary to recommend that

the Personnel Board be properly funded to perform all of its duties, both old and new.

ACTION REQUIRED: Statutory and Regulatory Changes

#### **RECOMMENDATION 15:**

Require the Personnel Board members to be subject to the Executive Branch Ethics Code, and require the Board to report annually to the State Government Committee. In their annual report, the Board should address the following:

- a. the number of merit state employees at the beginning and end of the reporting period;
- the number of grievances filed and mediation requests made by merit employees during the reporting period;
- c. a tabulation of the types of grievances filed during the reporting period –
   suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- d. a tabulation of the types of mediation requests filed during the reporting period -suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- e. a comparison of the number of grievances and mediations filed by merit
   employees in previous reporting periods, including a comparison in the categories
   listed above;
- f. a tabulation of the stages in which employee complaints were resolved during the reporting period;
- g. the average amount of time taken to resolve employee complaints during the reporting period, by stage;

h. a comparison of the amount of time taken to resolve employee complaints during

the reporting period, by stage, and the amount of time taken during the previous

reporting periods.

**ACTION REQUIRED: Statutory Change** 

**RECOMMENDATION 16:** 

Allow agencies to place employees on paid leave during the interim between

issuance of an intent to dismiss letter and the date whereby the Cabinet Head, Agency

Head or his designee determines whether to dismiss, alter, modify or rescind the intent to

dismiss.

ACTION REQUIRED: Statutory and Regulatory Changes

**PROPOSED AMENDMENT – Representative Cherry**. Allow agencies

to place employees on paid leave during the interim between issuance of

an intent to dismiss letter and the effective date of the agency's final

action [whereby the Cabinet Head, Agency Head or his designee

determines whether to dismiss, alter, modify or rescind the intent to

dismiss].

**RATIONALE:** Without amendment, the time period between the date the

employer makes his determination of "whether to dismiss, alter, modify,

or rescind the intent to dismiss," and the effective date of that determined

action would not be covered.

#### **RECOMMENDATION 17:**

Implement a drug testing program for Executive Branch employees to include post offer/pre-employment drug testing, reasonable suspicion drug/alcohol testing, and random drug/alcohol testing.

ACTION REQUIRED: Statutory and Regulatory Changes

**PROPOSED AMENDMENT** —Representative Cherry. Explore the feasibility of implementing [implement] a drug testing program for Executive Branch employees in accordance with Fourth Amendment parameters, to include postoffer/pre-employment drug testing, reasonable suspicion drug/alcohol testing, and random drug/alcohol testing.

**RATIONALE:** Due to the complexity of drug testing laws for public employers, it appears that further studies are needed that would be outside the parameters of this Task Force in order to recommend that such a program be implemented.

**PROPOSED MODIFICATION - John Brown, III**. Propose modifying this recommendation by dropping "and random drug/alcohol testing."

#### **RECOMMENDATION 18:**

Amend KRS 61.394 to enhance state employee paid military leave benefit to a maximum of twenty-one (21) calendar days from the current maximum of fifteen (15) calendar days. Allow any unused days in a federal fiscal year to be carried over to the

following year. [Adding an additional week of paid leave and allowing service members

to roll over unused weeks to the following year would enhance current benefits in parody

with those benefits enjoyed by civil service employees in the federal government.]

ACTION REQUIRED: Statutory and Regulatory Changes

**PROPOSED AMENDMENT – Representative Cherry**. Amend KRS

61.394 to enhance state employee paid military leave benefit to a

maximum of twenty-one (21) calendar days from the current maximum of

fifteen (15) calendar days. Allow any unused days in a federal fiscal year

to be carried over to the following year. [Adding an additional week of

paid leave and allowing service members to roll over unused weeks to the

following year would enhance current benefits in *parity* [parody] with

those benefits enjoyed by civil service employees in the federal

government.]

**RATIONALE:** To correct typographical error.

**RECOMMENDATION 19:** 

Adopt one state leave request form for KRS 18A employees that would cover all

types of leave: annual, sick, Family and Medical Leave, compensatory, military, voting,

special, adverse weather, and blood donation. [This modification will allow a uniform

approach to employee leave, and align the leave request form with the uniform state

timesheets already in use.]

ACTION REQUIRED: Regulatory Change

**RECOMMENDATION 20:** 

Conduct a disparity study of Executive Branch employees to determine if there is

a disparity between the qualified work force of Kentucky citizens in protected classes,

and Executive Branch employees in protected classes. The study should break down the

numbers for each job category. [Implementation would require the Personnel Cabinet to

request appropriate funding through the budgetary process.]

ACTION REQUIRED: Executive Branch Action

**RECOMMENDATION 21:** 

Update the State Affirmative Action Plan consistent with federal requirements

and industry best practices. The updated Affirmative Action Plan should provide tools to

state agencies to assist them with reaching affirmative action goals established in the

plan. The updated Affirmative Action Plan should contain provisions for accountability

of agencies in the form of penalties for those agencies that do not make progress toward

affirmative action goals and rewards for those agencies that make progress toward

affirmative action goals.

ACTION REQUIRED: Executive Order and Statutory Change

**RECOMMENDATION 22:** 

Require mandatory training regarding diversity and the updated Affirmative

Action Plan to managers and other individuals making hiring decisions. The training

should include emphasis on ways to reach affirmative action goals and established

accountability provisions.

ACTION REQUIRED: Executive Order

**RECOMMENDATION 23:** 

Seek a reduction in the number of classifications of between 40 and 60 percent.

• Currently there are 1,657 classifications and 708 of them have no more

than five employees.

There are 200 inactive classifications.

• Many classifications are specific to one cabinet and should be broader.

**ACTION REQUIRED: Administrative** 

**RECOMMENDATION 24:** 

Maintain an annual increment in conjunction with the establishment of a

minimum, mid and maximum pay grade for each salary.

Pursue a current market survey and anticipate annual adjustments to the

minimum, mid and maximum pay grades.

When maximum salary conflicts with annual increment, consider alternate

methods to award annual increments, for example lump sum payments.

Further evaluate use of ACE and ERA awards.

Consider impact of the establishment of maximum salary on long term,

senior employees to ensure they are not inadvertently hurt as they

approach retirement.

ACTION REQUIRED: Legislative Consideration, Administrative

**RECOMMENDATION 25:** 

Train supervisors for employee evaluation.

• Use of evaluation process as a compensation for performance standard.

• Possibly use of outside consultant for selection of best practice methods.

ACTION REQUIRED: Administrative

**RECOMMONDATION 26:** 

Facilitate implementation of an optional 40-hour work week. Compensate

employees for additional time.

ACTION REQUIRED: Legislative Consideration, Administrative

PROPOSED NEW RECOMMENDATION – Representative Cherry:

Amend KRS 18A.140 as follows:

18A.140 Prohibition against discrimination and political activities.

(1) No person shall be appointed or promoted to, or demoted or dismissed

from, any position in the classified service, or in any way favored or

discriminated against with respect to employment in the classified services

because of his political or religious opinions or affiliations or ethnic origin

or sex or disability. No person over the age of forty (40) shall be

discriminated against because of age.

- (2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.
- (3) No employee in the classified service or member of the board or its executive director or secretary shall, directly or indirectly, pay or promise to pay any assessment for political purposes, or solicit or take any part in soliciting for any political party, or solicit or take any part in soliciting any political assessment, subscription, contribution, or service. No person shall solicit any political assessment, subscription, contribution, or service of any employee in the classified service.
- (4) No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any *partisan* public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. Officers or employees of the classified service may be candidates for and occupy *an elective office* [a town or school district office if the office is one for which no compensation, other than a per diem payment, is] provided *that*

[and] the election is on a nonpartisan basis, the officers or employees have complied with the requirements of KRS 61.080, and the duties of the elective office do not interfere with the state duties of the officer or employee in the classified service.

**RATIONALE:** This will allow state merit employees to run for, and be elected to, nonpartisan public office.

### TASK FORCE FINAL RECOMMENDATIONS

The following final recommendations were adopted by Task Force and were submitted to Governor Fletcher for consideration:

# **RECOMMENDATION 1 (unanimous vote):**

Maintain civil service protections against political influence in the selection of qualified state classified employees and for existing merit employees; redefine mission statement (KRS 18A.010(1)) to include strong and clear directive; clarify prohibitions against political discrimination within KRS 18A.140(1).

ACTION REQUIRED: Statutory change to amend to KRS 18A.010(1) to include the directives of KRS 18A.140(1).

## **RECOMMENDATION 2 (Vote:** No – 3; Absent – 4; Yes – 13:

Adoption of the proposals contained within the "Proposed Future Hiring Processes" (Attached as Appendix D) from the Personnel Cabinet dated September 2005, with the exception of the need for a clarification of the proposal under "C – Register" concerning "eliminating registers for career path promotions and promotions". Additionally, recommends maintaining an employee promotion system that provides career path opportunities through families of job classes based on merit, experience, excellent performance and evaluation. This provides for the capability for internal promotions without requiring external competition. This change will actually enhance the ability of a classified employee to promote within the existing system.

A need exists for promulgation of a comprehensive Personnel Board regulation that defines process, procedure, and implementation. (101 KAR 1:400 merely reiterates

the statutory requirements without any guidance for agency implementation).

"Seniority" as defined in KRS 18A.005(35) for an internal promotion shall not be a

controlling factor.

ACTION REQUIRED: Statutory and Regulatory changes

**RECOMMENDATION 3 (unanimous vote):** 

Increase efforts for recruiting and hiring qualified veterans, minorities, women,

and disabled.

ACTION REQUIRED: Statutory changes

**RECOMMENDATION 4 (unanimous vote):** 

Request Personnel Cabinet to study the feasibility of establishing a

comprehensive regulation for implementing procedures regarding background checks,

including but not limited to NCIC checks, and employment references for all executive

branch applicants. The Task Force supports legislation to appropriate funds which would

allow the Personnel Cabinet to conduct background checks on future employees

ACTION REQUIRED: Personnel Cabinet study and possible statutory and regulatory

changes.

**RECOMMENDATION 5 (unanimous vote):** 

Establish a process of ongoing review of the merit system and make

recommendations regarding the merit system including a comprehensive review and

update of KRS 18A and KAR 101. The review and update should be focused on

providing definitions for terms used throughout KRS 18A and KAR 101. The review and

update should also clarify any inconsistencies in the law including vague language

subject to differing interpretation. The update should make the law governing the merit

system user friendly and understandable and include a review of previous

recommendations that have not been implemented. After the initial review and update,

there should be an annual review and report.

ACTION REQUIRED: Policy Change

**RECOMMENDATION 6 (unanimous vote):** 

It is recommended that "burrowing," the act of switching from a non-merit

position to a merit position late in an administration to get special merit protections, be

limited by statute for those without reversion rights under 18A.005 by increasing the

probation period to one year. Therefore it is recommended that:

(1) Except when appointed to a job classification with an initial probationary period

in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an

employee shall serve a six (6) months probationary period when he is initially appointed

to the classified service. An employee may be separated from his position, reduced in

class or rank, or replaced on the eligible list during this initial probationary period and

shall not have a right to appeal, except as provided by KRS 18A.095. The employee may

be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.

- (2) An employee who satisfactorily completes the initial probationary period for the position to which he was initially appointed to the classified service shall be granted status and may not be demoted, disciplined, dismissed, or otherwise penalized, except as provided by the provisions of this chapter.
- (3) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.
- (4) An employee with status, who has been promoted, shall serve a promotional probationary period of six (6) months, except for those employees granted leave in excess of twenty (20) consecutive work days during this period. Such probationary periods shall be extended as prescribed in KRS 18A.005. During this period, he shall retain the rights and privileges granted by the provisions of this chapter to status employees.
- (5) An employee with status may request that he be reverted to a position in his former class at any time during the promotional probationary period.
- (6) A laid-off employee who accepts a bona fide written offer of appointment to a position shall not be required to serve an initial probationary period. He shall be an employee with status and shall have all rights and privileges granted employees with status under the provisions of this chapter.

(7) A former unclassified employee under the provisions of paragraphs (d), (e), (f),

(g), (h) and (i) of KRS 18A.115 shall serve an initial probationary period of twelve (12)

months if the employee is appointed to a position in the classified service unless that

employee had previously had status in the classified service or had been separated from

his or her previous unclassified position for at least one hundred and eighty (180) days

prior to the effective date of his or her appointment to the classified service.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 7 (Vote: No - 3; Absent - 3; Yes - 14):

KRS 18A.990, the penalty section of the civil service law, should be amended to

apply to the traditionally criminal acts set out in KRS 18A.145 and 18A.140(1).

Administrative acts within KRS 18A.005 through 18A.200, but not with including KRS

18A.140, should be decriminalized.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 8 (Vote No -1; Absent -4; Yes -15:

As presently enacted, KRS 18A.040 requires that "... rules, regulations and

practices meeting merit system standards shall, where such standards apply as a

prerequisite for federal grants-in-aid, be in effect continuously, notwithstanding any other

provision of KRS 18A.005 to 18A.200. "The federal guidelines are set forth in 41 CFR

60 at pages 121-148. As stated, the purpose of the guidelines is to "incorporate a single

set of principles which are designed to assist employers, labor organizations, employment

agencies, and licensing and certification boards to comply with requirements of Federal

law prohibiting employment practices which discriminate on grounds of race, color,

religion, sex, and national origin." The guidelines' focus is upon the procedures

prospective employers utilize in making employment decisions regarding all aspects of

the employment relationship. A procedure which has an adverse impact upon the

employment relationship of any protected class is deemed discriminatory and in violation

of the federal regulations.

This statutory attempt to ensure compliance with federal regulation creates

potential conflicts with regard to selection and affirmative action. Changes to selection

procedures of employees must be in compliance with federal guidelines set forth in 41

CFR 60. While it is not mandated, federal regulations allow for the establishment of

voluntary affirmative action programs. After reviewing KRS 18A, it is apparent that if

the Commonwealth utilizes a person's race, religion, sex or national origin as a factor in

selecting an employee, it would be in violation of state law as currently written.

Therefore, the current statutes should be amended to clearly permit an affirmative action

program.

ACTION REQUIRED: Statutory and Regulatory Change

**RECOMMENDATION 9 (unanimous vote):** 

Since both the Personnel Cabinet and the Personnel Board have the authority to

promulgate regulations with regard to personnel matters, topic areas that are under the

purview of each should be clarified and distinguished.

ACTION REQUIRED: Statutory and Regulatory Change

**RECOMMENDATIONS 10 & 14 Combined (unanimous vote):** 

Adopt procedures to encourage resolution of personnel issues at the agency level

prior to going before the Personnel Board. Make a progression of options available for

merit employees to address work-related complaints or disciplinary actions. At the

beginning of the process, the employee may choose between filing a grievance, or

requesting mediation where the agency is required to participate. If mediation is

unsuccessful, or the grievance procedures fail to address the employee's concerns to his

satisfaction, the employee may have his concern heard by a peer review committee (to be

established according to Personnel Cabinet guidelines). If the peer review committee

action fails to address the employee's concerns to his satisfaction, the employee may

appeal the decision of the peer review committee to the Personnel Board.

Require the Personnel Board to monitor all grievances and mediations filed. This

additional duty, along with information showing that the Personnel Board is under funded

in its implementation of existing statutory duties, makes it necessary to recommend that

the Personnel Board be properly funded to perform all of its duties, both old and new.

ACTION REQUIRED: Statutory and Regulatory Change

**RECOMMENDATION 11 (unanimous vote):** 

The reporting requirements in KRS 18A.030 should be reviewed for relevance

and usefulness in providing meaningful oversight.

ACTION REQUIRED: Statutory Change

## RECOMMENDATIONS 12 and 15 (combined – unanimous vote):

Final written decisions of the Personnel Board should be made available for review electronically, organized by the statutory basis for appeal.

ACTION REQUIRED: Change in Personnel Board Practice

Require the Personnel Board members to be subject to the model code of ethics (Attached as Appendix D), and require the Board to report annually to the State Government Committee. In their annual report, the Board should address the following:

- a. the number of merit state employees at the beginning and end of the reporting period;
- the number of grievances filed and mediation requests made by merit
   employees during the reporting period;
- c. a tabulation of the types of grievances filed during the reporting period suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- a tabulation of the types of mediation requests filed during the reporting period -- suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- e. a comparison of the number of grievances and mediations filed by merit employees in previous reporting periods, including a comparison in the categories listed above;
- f. a tabulation of the stages in which employee complaints were resolved during the reporting period;

the average amount of time taken to resolve employee complaints during g.

the reporting period, by stage;

h. a comparison of the amount of time taken to resolve employee complaints

during the reporting period, by stage, and the amount of time taken during

the previous reporting periods.

**RECOMMENDATION 13 (unanimous vote):** 

The following technical changes to KRS 18A should be made:

• Change "commissioner" to "secretary" in 18A.037 and 18A.040. These are

apparent oversights from reorganization legislation.

• Update the citation in 18A.043 for the Federal Drug Free work place to read "41

USCA § 707 et seq."

ACTION REQUIRED: Statutory Change

**RECOMMENDATION 16 (unanimous vote):** 

Allow agencies to place employees on paid leave during the interim between

issuance of an intent to dismiss letter and the effective date of the agency's final action.

ACTION REQUIRED: Statutory and Regulatory Changes

**RECOMMENDATION 17** (Vote: No - 7; Absent - 5; Yes - 8):

Explore the need and feasibility of implementing a drug testing program for

Executive Branch employees to include post offer/pre-employment drug testing,

reasonable suspicion drug/alcohol testing, and random drug/alcohol testing.

ACTION REQUIRED: Statutory and Regulatory Changes

**RECOMMENDATION 18 (unanimous vote)**:

Amend KRS 61.394 to enhance state employee paid military leave benefit to a

maximum of twenty-one (21) calendar days from the current maximum of fifteen (15)

calendar days. Allow any unused days in a federal fiscal year to be carried over to the

following year. [Adding an additional week of paid leave and allowing service members

to roll over unused weeks to the following year would enhance current benefits in parity

with those benefits enjoyed by civil service employees in the federal government.]

ACTION REQUIRED: Statutory and Regulatory Changes

**RECOMMENDATION 19 (unanimous vote):** 

Adopt one state leave request form for KRS 18A employees that would cover all

types of leave: annual, sick, Family and Medical Leave, compensatory, military, voting,

special, adverse weather, and blood donation. [This modification will allow a uniform

approach to employee leave, and align the leave request form with the uniform state

timesheets already in use.]

ACTION REQUIRED: Regulatory Change

**RECOMMENDATION 20 (unanimous vote):** 

Conduct a disparity study of Executive Branch employees to determine if there is

a disparity between the qualified work force of Kentucky citizens in protected classes,

and Executive Branch employees in protected classes. The study should break down the

numbers for each job category. [Implementation would require the Personnel Cabinet to

request appropriate funding through the budgetary process.]

ACTION REQUIRED: Executive Branch Action

**RECOMMENDATION 21 (unanimous vote):** 

Update the State Affirmative Action Plan consistent with federal requirements

and industry best practices. The updated Affirmative Action Plan should provide tools to

state agencies to assist them with reaching affirmative action goals established in the

plan. The updated Affirmative Action Plan should contain provisions for accountability

of agencies in the form of penalties for those agencies that do not make progress toward

affirmative action goals and rewards for those agencies that make progress toward

affirmative action goals.

ACTION REQUIRED: Executive Order and Statutory Change

**RECOMMENDATION 22 (unanimous vote):** 

Require mandatory training regarding diversity and the updated Affirmative

Action Plan to managers and other individuals making hiring decisions. The training

should include emphasis on ways to reach affirmative action goals and established

accountability provisions.

ACTION REQUIRED: Executive Order

**RECOMMENDATION 23 (unanimous vote):** 

Seek a reduction in the number of classifications of between 40 and 60 percent.

• Currently there are 1,657 classifications and 708 of them have no more

than five employees.

There are 200 inactive classifications.

• Many classifications are specific to one cabinet and should be broader.

ACTION REQUIRED: Administrative

**RECOMMENDATION 24 (unanimous vote):** 

Maintain an annual increment in conjunction with the establishment of a

minimum, mid and maximum pay grade for each salary. Employees who are employed

prior to the effective date of this legislation shall be exempt from maximum salaries.

• Pursue a current market survey and anticipate annual adjustments to

the minimum, mid and maximum pay grades.

When maximum salary conflicts with annual increment, consider

alternate methods to award annual increments, for example lump sum

payments.

• Further evaluate use of ACE and ERA awards.

• Consider impact of the establishment of maximum salary on long-

term, senior employees to ensure they are not inadvertently hurt as

they approach retirement.

ACTION REQUIRED: Legislative Consideration, Administrative

**RECOMMENDATION 25 (unanimous vote):** 

Train supervisors for employee evaluation.

Study, and as appropriate, use the evaluation process as a

compensation for performance standard.

• Possibly use of outside consultant for selection of best practice

methods.

ACTION REQUIRED: Administrative

**RECOMMENDATION 26 (unanimous vote):** 

Encourage agencies to explore implementation of an optional 40-hour work week.

Compensate employees for additional time.

ACTION REQUIRED: Legislative Consideration, Administrative

**RECOMMENDATION 27 (unanimous vote):** 

Amend KRS 18A.140 as follows:

18A.140: Prohibition against discrimination and political activities.

(1) No person shall be appointed or promoted to, or demoted or dismissed from, any

position in the classified service, or in any way favored or discriminated against with

respect to employment in the classified services because of his political or religious

opinions or affiliations or ethnic origin or sex or disability. No person over the age of

forty (40) shall be discriminated against because of age.

(2) No person shall use or promise to use, directly or indirectly, any official authority or

influence, whether possessed or anticipated, to secure or attempt to secure for any person

- an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.
- (3) No employee in the classified service or member of the board or its executive director or secretary shall, directly or indirectly, pay or promise to pay any assessment for political purposes, or solicit or take any part in soliciting for any political party, or solicit or take any part in soliciting any political assessment, subscription, contribution, or service. No person shall solicit any political assessment, subscription, contribution, or service of any employee in the classified service.
- (4) No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any *partisan* public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. Officers or employees of the classified service may be candidates for and occupy *an elective office* [a town or school district office if the office is one for which no compensation, other than a per diem payment, is] provided *that* [and] the election is on a nonpartisan basis, *the officers or employees have complied with the requirements of KRS 61.080, and the duties of the elective office do not interfere with or create any conflicts of interest with the state duties of the officer or employee in the classified service. Furthermore, the employee must give notice to his or her agency of the his or her intent to run for elective office upon said employee filing with the appropriate entity.*

### **CONCLUSION**

The Blue Ribbon Task Force for the Merit System worked diligently to gain a working understanding of the merit system in order to evaluate the current law, policies, and practices. In addition to presentations on basic merit system principles, the Task Force received presentations from experts on best practices in human resources and merit system reform.

Once the Task Force had a high level of knowledge regarding the

Commonwealth's Merit System, it focused its attention on understanding employee
interests and concerns. The Task Force gave strong consideration to the information that
state employees provided. Based upon the work and efforts of the Task Force, informed
final recommendations are included in this report. The members of the Task Force
worked cooperatively in a non-partisan manner to make recommendations that are
employee friendly and in the best interest of the public.

Under an aggressive timeline, the final recommendations of the Task Force represent the strongest recommendations. Merit System reform is a long term process and the final recommendations are just the beginning. The final recommendations are not the answer to all issues and concerns related to the Commonwealth's Merit System.

Accordingly, the Task Force encourages further and sustained review and improvement of the Merit System to ensure that the Merit System exceeds the highest standards for state employees and the citizens of the Commonwealth.

# **BLUE RIBBON TASK FORCE FOR MERIT SYSTEM**

# **FINAL REPORT**

# **JANUARY 2006**

# **APPENDICES**

(SEE ATTACHED CD)

- A. PAST MERIT SYSTEM STUDIES
- B. TASK FORCE PRESENTATIONS
- C. EMPLOYEE INPUT
- D. ATTACHMENTS

